

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of C. M. D. CARUSO, Minor.

UNPUBLISHED  
January 21, 2014

No. 316402  
Oakland Circuit Court  
Family Division  
LC No. 10-778820-NA

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Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(a)(ii). Because we conclude there were no errors warranting relief, we affirm.

Although her arguments are not entirely clear, respondent appears to argue on appeal that the trial court erred when it determined that the Department of Human Services proved a statutory ground by clear and convincing evidence and erred when it determined that termination was in the child's best interests. This Court reviews for clear error the trial court's decision that a statutory ground for termination was proven by clear and convincing evidence and its decision on regarding the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A trial court's finding is clearly erroneous if, although there is evidence to support it, this Court on the entire evidence is left with the definite and firm conviction that a mistake has been made. *Id.*

"A court may terminate a respondent's parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence." *Id.* The trial court terminated respondent's parental rights to the child under MCL 712A.19b(3)(a)(ii), which applies when the "child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period."

There was no dispute that respondent deserted the child for 91 or more days and did not seek custody of the child during the relevant period. Respondent even admitted that she stopped caring for the child in late 2009. She testified that she did not have any contact with the child from November 2010 to March 2012. She only visited the child in March 2012, August 2012, and September 2012. Respondent also failed to participate in the 2010 proceedings because she did not want to be arrested under outstanding warrants. Thus, there was clear and convincing evidence to support this ground for termination. *Id.*

Once a statutory ground for termination has been proven, the trial court must determine whether the Department has proved by the preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining whether termination is in the child's best interests, the court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, the foster environment, and the parent's continued involvement in situations involving domestic violence. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). A court may also consider the child's need for permanency, stability, and finality. *Olive/Metts*, 297 Mich App at 42.

The court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. There was no dispute that respondent failed to provide care for the child for several years. Respondent claimed that she did not participate in the 2010 proceeding because she had outstanding warrants and feared that she would be arrested. Respondent had a history of substance abuse and was engaged to be married to a man who was also a former substance abuser. The child's behavior was improving while he was with the foster parents, who provided a safe and stable environment for the child. The foster parents also wished to adopt the child. The foster parents had bonded with the child, which was in stark contrast to respondent; the evidence showed that she had no bond with the child and that the child did not ask about her.

Respondent argues that the trial court erred by failing to consider relative placement before terminating her parental rights. See *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). *Mason* is distinguishable from this case. In *Mason*, the respondent was incarcerated and the child was placed with relatives. *Id.* This Court has explained that, generally, "'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' [and] the fact that a child is *living with relatives* when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *Olive/Metts*, 297 Mich App at 43 (emphasis added). In this case, however, the child was placed with non-relatives when the case proceeded to termination. Nevertheless, respondent maintains, "While *Mason* deals with a circumstance where the children were initially placed with relatives, further case law has found that the existence of relatives cannot be ignored simply because a foster family who wants to adopt happens to come along. Without that approach, termination [] would be based on happenstance." Respondent fails to cite any authority to support this position. "It is not enough for an appellant to simply announce a position or assert an error in his or her brief and then leave it up to this Court to discover and rationalize the basis for the claims, or unravel and elaborate the appellant's arguments, and then search for authority either to sustain or reject the appellant's position." *DeGeorge v Warheit*, 276 Mich App 587, 594-595; 741 NW2d 384 (2007). In addition, there is record evidence that the child's relatives did not want the child placed with them. Accordingly, on this record, we cannot conclude that the trial court erred when it determined that termination was in the child's best interest.

Respondent also claims that the Department violated her right to due process by filing a new petition in October 2012. The Department filed a new petition after it learned of new allegations that the child's father physically abused the child. Respondent fails to cite any authority to support her position that the Department has no authority to file a new petition on the basis of the newly discovered evidence. Moreover, contrary to respondent's claim, the

Department was not obligated to make reasonable efforts to reunite the child with her. Where the trial court determines that the parent has subjected the child to “aggravated circumstances”, the Department may seek immediate termination without making efforts to reunify the parent and child. See MCL 712A.19a(2)(a). These circumstances include instances where the child was abused by someone in the child’s home and the parent abandoned the child. MCL 722.638(1)(a)(i). Thus, under MCL 712A.19a(2)(a) and MCL 722.638(1)(a)(i), reasonable efforts to reunify the child and respondent were not required.

Respondent’s contention that it was error to admit hearsay evidence during the best interest hearing is inaccurate. During the dispositional phase of a child protective proceeding, all relevant and material evidence, including hearsay, is admissible. See MCR 3.977(H)(2); *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000). Here, jurisdiction was established at the adjudication and statutory basis hearing during which the court concluded that at least one statutory ground for termination existed. The best interest hearing was during the dispositional phase of the proceedings, and hearsay was accordingly admissible.

There were no errors warranting relief.

Affirmed.

/s/ Cynthia Diane Stephens  
/s/ Michael J. Kelly  
/s/ Michael J. Riordan